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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,450	03/02/2005	Sunna Torge	450117-05507	3120

7590 02/25/2008
William S Frommer
Frommer Lawrence & Haug
745 Fifth Avenue
New York, NY 10151

EXAMINER

DARNO, PATRICK A

ART UNIT	PAPER NUMBER
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2163

MAIL DATE	DELIVERY MODE
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02/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/526,450

Applicant(s)

TORGE ET AL.

Examiner

PATRICK A. DARNO

Art Unit

2163

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 2, 8-16, 22-27, 30 and 31.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


DON WONG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's proposed amendments received 01/31/2008 raise a new issue which will require further consideration and may require a further search. Specifically the addition of the word "erased" in at least claim 1 appears to change the scope of the claims. Therefore, the prior art rejections with respect to this limitation will need to be revisited.

Applicant Argues:

However, upon review of the Escher provisional application, Applicants respectfully submit that the provisional application fails to provide the disclosure relied upon by the Examiner in the present office action. Therefore, the provisional application is insufficient to entitle U.S. Publication No. 2003/0110124 to Escher the benefit of a filing date of December 11, 2001.

Thus, Applicants submit that the earliest filing date U.S. Publication No. 2003/0110124 to Escher is entitled to is December 11, 2002.

Examiner Responds:

Examiner is not persuaded. Support for portions cited from U.S. Publication No. 2003/0110124 can be found in at least paragraphs [0028] and [0038] of provisional application number 60/338,645. Specifically, paragraph [0038] of provisional application number 60/338,646 recites the invention (i.e., Escher's invention) differs from conventional prior art because conventional prior art databases do not allow users to perform analysis based on historical data. This appears to provide direct support for modifying search criteria based on a user history, or user profile, as is used from the Escher reference, by the Examiner, in rejecting Applicant's claims.

Therefore, the Examiner concludes that the Escher reference is entitled to the provisional application filing date of December 11, 2001.

Examiner Notes:

With respect to the Applicant's arguments about the relevancy of the Escher reference disclosing limitations of Applicant's claims, the Examiner directs to the Applicant to the Examiner's office action mailed 04/10/2007.

Applicant Argues:

Applicants submit that the search log and the distillation process of Kokkonen occur periodically or under the request of the server in direct contrast with Applicants' claimed each time a new search criterion is provided.

Examiner Responds:

Examiner is not persuaded. The Applicant's "each time a new search criterion is provided" is simply a specifically defined period. And since Kokkonen discloses setting a period (i.e., periodically) for executing the search log and distillation process, it appears that Applicant's claim limitation is rendered an obvious variation of the prior art of record. In other words, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to set a specific time period in light of the Kokkonen reference.

Therefore, the claims remain rejected under the reasons set forth in the Examiner's final office action.

Examiner Notes:

The Applicant's final remaining argument on page 15 of 16 of the Applicant's response received 01/31/2008 will not be addressed at this time because the proposed amendment to this portion of the claimed invention will require further consideration and may require a further search.